

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

QUANTUM COMMUNICATIONS, LTD,	:	
Plaintiff	:	
	:	AMENDED COMPLAINT
VS	:	CASE NO. 1:17cv1640
	:	
EAGLE FORUM, EAGLE FORUM	:	(Honorable Yvette Kane)
EDUCATION AND LEGAL DEFENSE	:	
FUND, IAN A. NORTON, ROETZEL	:	
AND ANDRESS, LPA, and EDWARD	:	
MARTIN, JR.,	:	JURY TRIAL DEMANDED
Defendants	:	

* * * * *

August 23, 2019

* * * * *

Oral Deposition of Kevin Harley, held in the offices of PREMIER REPORTING, LLC, 112 Market Street, Harrisburg, Pennsylvania, 17101, commencing at 10:02 a.m., on the above date, before Colleen V. Wentz, RMR, CRR, a Professional Court Reporter and a Notary Public of the Commonwealth of Pennsylvania.

PREMIER REPORTING, LLC
(717) 243-9770
linda@premierreportingllc.com

8 South Hanover Street
Suite 201
Carlisle, PA 17013

112 Market Street
Suite 406
Harrisburg, PA 17101

1 APPEARANCES:

2 FRANK G. FINA LAW OFFICE
3 1000 Germantown Pike, Suite D-3
4 Plymouth Meeting, Pennsylvania 19462
5 BY: FRANK FINA, ESQUIRE
6 (484) 681-9387
7 fgflegal@outlook.com

8 Counsel for the Plaintiff

9 ANDREW L. SCHLAFLY LAW
10 939 Old Chester Road
11 Far Hills, New Jersey 07931
12 BY: ANDREW SCHLAFLY, ESQUIRE
13 (908) 719-8608

14 Counsel for the Defendant
15 And Counterclaim Plaintiff Eagle Forum
16 Education and Legal Defense Fund and
17 Defendant Edward R. Martin, Jr.

18 KLEINBARD
19 Three Logan Station
20 1717 Arch Street, 5th Floor
21 Philadelphia, Pennsylvania 19103
22 BY: EDWARD BUTKOVITZ, ESQUIRE
23 (215) 568-2000
24 ebutkovitz@kleinbard.com

25 Counsel For Eagle Forum

INDEX

WITNESS	EXAMINATION	PAGE
Kevin Harley	By Mr. Schlafly	4
Kevin Harley	By Mr. Butkovitz	87
Kevin Harley	By Mr. Fina	95
Kevin Harley	By Mr. Butkovitz	98
Kevin Harley	By Mr. Schlafly	102
Kevin Harley	By Mr. Butkovitz	105
Kevin Harley	By Mr. Fina	108
Kevin Harley	By Mr. Butkovitz	110

EXHIBITS

NO.	DESCRIPTION	PAGE
Harley Exhibit 1	Notice of Deposition	4
Harley Exhibit 2	List of allegations in the Complaint	6

P R O C E E D I N G S

(Proceedings commenced at 10:02 a.m.)

* * * * *

KEVIN HARLEY, after having been duly sworn, was examined and testified as follows:

* * * * *

EXAMINATION

BY MR. SCHLAFLY:

Q. Mr. Harley, are you here pursuant to a Notice of Deposition? I'll show you.

A I was asked to be here, so I'm here.

MR. SCHLAFLY: Okay. If you can mark this as -- how should we do the numbering? Off the record for a second.

(At this time, a discussion was held off the record and Harley Exhibit 1 was marked for identification.)

MR. SCHLAFLY: Usual stipulations.

BY MR. SCHLAFLY:

Q. I've shown you, Mr. Harley, what's Exhibit 1, the Notice of Deposition. And have you seen that before?

A. No.

Q. Have you ever been deposed before?

A. Yes.

1 Q. Anybody else on that phone call?

2 A. Not that I -- not that I can remember.

3 Q. And on your end of the phone call, would
4 Charlie Gerow have been in the same room as you and you
5 speaking on a speaker phone?

6 A. Yes.

7 Q. And would that have been here in these
8 offices in Harrisburg?

9 A. Yes.

10 Q. How long was the conversation, to the best
11 of your recollection?

12 A. I don't -- I don't remember. I think it was
13 -- we were talking about other issues and other work
14 that we were doing for them. And this was part of that.
15 If it was in the beginning, middle, or the end, I can't
16 -- I can't remember when it was raised.

17 Q. Do you recall whether you discussed specific
18 terms of any agreement during that phone call?

19 A. It's my recollection that Ed agreed to
20 continue with the original agreement and the fee
21 structure.

22 Q. Do you recall agreeing to any specific terms
23 about the scope of work?

24 A. No. That we were continuing to do work on
25 behalf of Eagle Forum Legal Defense Fund and continue to

1 actually expand our work from -- we had many, many
2 conversation about that over a period of time, including
3 weekly telephone calls.

4 Q. Well, it says here that Martin agreed,
5 comma, on behalf of Eagle Forum, comma. Is that
6 correct?

7 A. Yes. Eagle Forum Legal Defense Fund,
8 whatever -- whatever entity, you know -- internally, we
9 referred to it as Eagle Forum because it was -- there
10 was several different organizations. But just
11 internally, that's how we would refer to it.

12 Q. But I'm asking you do you recall which
13 entity?

14 A. It would have been the original entity that
15 we had the agreement with, which, I believe, was Eagle
16 Forum Legal Defense Fund.

17 Q. So are you saying that this statement here
18 in paragraph 17 is incorrect then because at 17 --
19 paragraph 17, it refers to on behalf of Eagle Forum.

20 A. I'm saying it should be whomever we had our
21 original agreement with. That was -- things continued
22 as they were. That was what I got from that
23 conversation with Ed Martin.

24 Q. So it's your testimony, then, that it's not
25 correct as stated here in your pleading, that Martin

1 agreed comma, on behalf of Eagle Forum.

2 MR. BUTKOVITZ: Object to form.

3 BY MR. SCHLAFLY:

4 Q. You can still answer the question. You're
5 stating that's incorrect, as stated here, that Martin
6 agreed, comma --

7 A. I'm not stating that it's incorrect. What
8 I'm stating is that what Ed Martin agreed to is that we
9 would continue with our original agreement and the terms
10 of the original agreement that we had signed with Ian.

11 Q. I'm asking you on behalf of whom?

12 A. Well, it was -- we were representing
13 whomever we were representing, which I believe was Eagle
14 Forum Legal Defense Fund.

15 Q. So you're saying that Martin -- this is not
16 quite correct, that Martin agreed on behalf of Eagle
17 Forum?

18 MR. BUTKOVITZ: Objection. Asked and
19 answered.

20 BY MR. SCHLAFLY:

21 Q. You can answer.

22 A. I'm not saying it's incorrect.

23 Q. The allegation that he agreed to terms of
24 the original agreement, did those terms that Martin
25 allegedly agreed to, did they include a right to

1 terminate the agreement?

2 A. I don't believe there was a conversation --
3 that conversation didn't include -- we didn't discuss
4 that.

5 Q. Did the terms include who was going to
6 direct the work to be performed?

7 A. Ed was going to be -- had been and was
8 continuing to be our point of contact. We would
9 strategize, develop communication plans and -- with him,
10 in coordination with him.

11 Q. Would he direct the work then? Would you
12 work, pursuant to his instructions?

13 A. We would -- well, the way this would work,
14 we would discuss things, strategize, and come up with
15 ideas and plans, kick those around, and then execute.
16 But he was -- he was the -- he was part of all of that,
17 yes.

18 Q. What -- was the execution of these ideas
19 dependent on his authorization?

20 A. Sure. We weren't going to do something that
21 the client didn't want us to do. Absolutely.

22 Q. Were expenses to be preapproved?

23 A. Expenses, I'd have to go back and look at
24 the original contract. Whatever expenses we -- I don't
25 know that we would have a discussion about expenses.

1 Any travel or anything was put in to the original
2 agreement.

3 Q. Was preapproval required for expenses?

4 A. I'd have to go back and look at the original
5 agreement.

6 Q. Do you recall, as you sit here today in your
7 discussion with Ed Martin, whether there was any --

8 A. I don't know that -- I don't remember having
9 any discussion with Ed Martin about expenses. We did
10 incur expenses -- travel expenses numerous times.

11 Q. And did you get preapproval for those travel
12 expenses?

13 A. I -- I -- you can ask -- that's a question
14 for Charlie. I don't know.

15 Q. So you did not obtain preapproval for
16 expenses; is that right?

17 A. That is correct.

18 Q. Did you ever send any film or video to Ed
19 Martin?

20 A. I did not.

21 Q. Did anyone at Quantum mechanics -- Quantum
22 Communications send any film or video to Ed Martin?

23 A. I don't know.

24 Q. Who would know that?

25 A. I did not. You can ask Charlie. I don't

1 believe we did.

2 Q. Did you ever review any film or video?

3 A. Yes.

4 Q. What happened to it? Where is the film or
5 the video now?

6 A. We have it.

7 Q. You have it. Did you send that film or
8 video to anyone at Eagle Forum?

9 A. No.

10 Q. Did you ever refer any donors to Ed Martin?

11 A. I did not. Charlie may have.

12 Q. Is that something you've done for other
13 clients, referred donors to them, potential donors?

14 A. It's not something that, you know, we
15 typically -- we do not do fundraising. Typically, for
16 our political campaigns, if I'm doing a political
17 campaign, usually there's a fundraising aspect of it.
18 If I run into somebody that is interested, I say well,
19 you know, you might want to write a check to this or to
20 that candidate, but --

21 Q. Okay. So for some candidates --

22 A. Yeah. This was not a candidate, though.
23 This client was not a candidate. This candidate -- this
24 client was not running for office.

25 Q. So it was not part of the scope of work for

1 Q. Right. Okay. Do you have an opinion
2 whether this invoice was addressed to the correct
3 person?

4 A. I don't.

5 Q. And the description of the invoice, it says
6 fee for agency services in support of Eagle Forum,
7 November of 2016; is that correct?

8 A. That's what it says.

9 Q. And what you know now, as you look at that,
10 is that a correct description of your work?

11 A. For agency services and support, yeah.
12 That's it.

13 Q. Is it your view that you were owed \$20,000 a
14 month whether you did any work or not?

15 A. We had a retainer for \$20,000 a month.

16 Q. And is it your view that you were owed that,
17 regardless of whether you did any work?

18 A. That was the agreement, that we would be
19 paid \$20,000 a month.

20 Q. Regardless of whether you did any work?

21 A. Well, we did work.

22 Q. Did you do an equal amount of work in each
23 of these months?

24 A. Sure.

25 Q. Really? Same amount of work in each of

1 these months?

2 A. Listen, we had an agreement for \$20,000 a
3 month. It wasn't -- we didn't do itemized billing. We
4 weren't -- the agreement did not require us to bill
5 against the retainer, nor did it say that you had to
6 keep hourly time logs. It was for \$20,000 a month. We
7 -- our business, we set up all of our clients pay a
8 monthly retainer. That's how it works.

9 Q. Is that true for all of your clients?

10 A. I believe it is true for all of our clients.

11 Q. Political candidates, too?

12 A. Some campaigns we get a monthly retainer
13 when we were doing management services or strategic
14 consultation. Some campaigns will come to us and just
15 say, you know, we want a direct mail piece and nothing
16 else. So we'll do that. And then just bill them the
17 cost plus -- we add in our -- we add in our cost. But
18 typically, when we are involved in a campaign, we take a
19 monthly retainer. I would say probably nearly all the
20 campaigns -- nearly all, particularly if it's a
21 significant political campaign, we get a monthly
22 retainer.

23 Q. But there's some for which you do not do
24 business that way, right?

25 A. Very few. Right.

1 Q. But there's some, right?

2 A. Yeah. But -- yeah. And that's also -- that
3 would be in an agreement. A political campaign, again,
4 is different than doing a strategic communication plan
5 and executing that for a client. This is -- this was
6 not a political campaign.

7 Q. And the agreements, you reference, with
8 these other clients, were they typically in writing?

9 A. Yes.

10 Q. Do you have any oral agreements with other
11 clients of the magnitude of \$20,000 a month on retainer?

12 A. You can talk to my business partner about
13 that. But I believe we have had oral agreements for
14 significant amounts of money, yes.

15 Q. And what percentage of your clients would
16 you operate on an oral agreement for \$20,000 a month?

17 A. Well, the clients that I bring in, we have
18 an agreement. We had an agreement with Eagle Forum.

19 Q. Are you referring to a written agreement?

20 A. Yeah.

21 Q. So clients you work with, you do not have an
22 oral agreement for \$20,000; is that right?

23 A. Typically we have a written agreement, as we
24 had in this case.

25 Q. Just answer my question.

1 A. I did. I said typically, we have an
2 agreement, as we had in this case. I think that
3 answered your question.

4 Q. Do you have any clients whom you work with,
5 whom you have an oral agreement of a magnitude of
6 \$20,000 a month?

7 A. I personally do not.

8 Q. And are you aware of Quantum
9 Communications's having any relationship with any client
10 of the magnitude of \$20,000 a month on retainer on an
11 oral, rather than a written basis?

12 A. You could check with --

13 Q. No, no. Don't ask me that. I'm asking if
14 you are aware?

15 A. I'm not aware. But again, I might add, we
16 had a written agreement.

17 Q. A written agreement that Ed Martin told you
18 was invalid, correct?

19 A. And that he would continue to abide by the
20 agreement.

21 Q. And why would he do that? What's your
22 understanding of why someone would tell you that the
23 written agreement is invalid. And then days later, tell
24 you it was valid? Why would somebody do that?

25 MR. FINA: Objection. Objection.

1 BY MR. SCHLAFLY:

2 Q. To the best of your knowledge. Did he
3 explain -- did Ed tell you why he would do that,
4 invalidate a written agreement and then days later say
5 it was valid?

6 A. Well, he never invalidated the agreement.

7 Q. Well, let's go back and look at paragraph
8 16, in Exhibit 2.

9 A. I read it. Ed agreed to continue with our
10 agreement, including the terms of the agreement --

11 Q. In paragraph 16.

12 A. -- which is the \$20,000 a month.

13 Q. Paragraph 16, it says that, Ed contacted and
14 informed you that Ian Northon was not authorized to sign
15 the agreement; is that correct?

16 A. That is correct.

17 Q. And it's your testimony a few days later --
18 not on the same day, right? Or is it your testimony the
19 same day?

20 A. I don't -- I don't recall.

21 Q. You don't recall.

22 MR. BUTKOVITZ: Objection. What's the
23 question?

24 THE WITNESS: Yeah. Did we --

25 MR. BUTKOVITZ: Hold on one second. There's

1 Quantum Communications to do anything for Ed Martin,
2 personally, or did Ed Martin personally ever agree to
3 pay anything?

4 A. I don't know that Ed Martin ever said he was
5 going to write a check out of his personal bank account,
6 if that's what you're asking.

7 Q. That's what I'm asking. Whether -- you know
8 the difference between someone acting for an
9 organization and somebody acting for himself, right?
10 And I'm just asking you if you ever had any
11 understanding that Ed Martin was engaging Quantum
12 Communications for him, personally?

13 A. No.

14 MR. SCHLAFLY: No further questions.

15 MR. BUTKOVITZ: I have a very quick
16 follow-up.

17 CROSS EXAMINATION

18 BY MR. BUTKOVITZ:

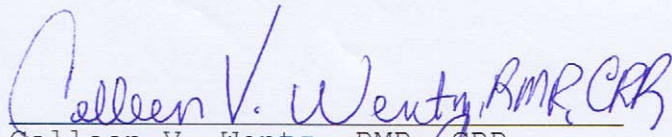
19 Q. So just staying on the exhibit we were just
20 looking at --

21 A. Okay.

22 Q. -- the response to request for admissions
23 and interrogatories, the subsequent oral communication
24 that's referenced here, was that a communication that
25 was to you?

C E R T I F I C A T I O N

I, Colleen V. Wentz, RMR, CRR, hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me during the course of this deposition, and that this is a correct transcript of the same.


Colleen V. Wentz, RMR, CRR
Court Reporter, Notary Public

Commonwealth of Pennsylvania - Notary Seal
Colleen Victoria Wentz, Notary Public
Snyder County
My commission expires June 8, 2022
Commission number 1029397
Member, Pennsylvania Association of Notaries

The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.